the wording were suitably altered. I take the view that what I now say on this matter is only *obiter* but as the point has been raised and argued before me I propose to state my opinion. The learned Deputy Legal Adviser has argued that whatever phraseology is used the clause left blank, Thirdly in the form given in the Land Code, Schedule XXIV (a), cannot be used for increasing the amount of money secured by the charge on the land beyond the sum expressed to be lent on the charge plus the interest due thereon. Mr. Ramani has argued that it was open to the chargor and chargee to make under "thirdly" additional contractual obligations and that such additional contracts were in order even though they purported to pledge the land as security for the repayment of sums in addition to the sum expressed to be lent plus the interest on that sum. The point is not without difficulty and I realise that in the past documents have been registered with charges which contain clauses purporting to increase in this way the sum secured on the land; but this document, the draft form of the Schedule, has to be construed as it stands. The Registrar is allowed under section 230 of the Land Code to permit such alterations and additions to any of the forms in Schedule XXIV as are necessary and are not inconsistent with anything in any written law contained. The problem before me at the moment is not whether I consider it desirable that there should be power to create additional burdens on the land by means of the blank clause in the draft form of the Schedule but whether the legislature has provided for the creation of such additional charges. One of the disputed clauses in the memorandum of charge concerns the insurance of the buildings on the land and Schedule XXIV (d) contains a clause, sub-clause (iii), dealing with the question of insurance on the building on the land, but it contains no clause allowing the chargee in default himself to insure and for the money paid for insurance to be a charge on the land. This is all the more remarkable because in the memorandum of charge, Schedule L, of the Land Enactment of 1911, there is actual provision that it shall be lawful for the chargee to insure the buildings and recover the cost of so doing in the same manner as arrears of interest. It seems to me, therefore, that those charging words have been omitted on purpose and in view of this and of the absence of any express provision in the law allowing insurance money to be recovered as a charge on the land I can only come to the conclusion that it was not the intention of the legislature to allow additional burdens on the land. The same argument seems to apply to the other two clauses dealing with repairs to buildings, payment of quit rent, assessment, rates and taxes. The question of repairs to buildings is dealt with in section 133 of the Land Code where it is laid down that there is an implied agreement by the chargor to keep the buildings in repair, but there is nothing in the Land Code to say that the chargee may repair and recover as a charge on the land. I, therefore, come to the conclusion that the law does not permit additional charges, as in sixthly, seventhly and eighthly of the document or memorandum of charge, rejected by the Registrar, to be added under the blank clause "thirdly" in the draft form of the memorandum of charge in Schedule XXIV (a).

The object of the charging clause in the Land Code I take to be to facilitate the lending of money or the raising of money by a charge on land. Where the land charged is of itself of no very great value but its value arises from the fact that valuable buildings stand on it, under the view which I have taken of the law as it stands the object of the Land Code to facilitate the raising of money seems to be very largely defeated. I am in entire agreement with the submission of the learned counsel for the appellant that obligations such as those contained in clauses sixthly, seventhly and eighthly which are undertaken for the benefit of the chargor and for the protection of the security given to the chargee should be made possible by legislation. In particular it seems to me very desirable that the chargee should have power to keep buildings insured and to recover the insurance premia paid as a charge on the land otherwise the value of the security may vanish overnight, and it can scarcely be assumed that this last is the wish of the legislature. However I am only concerned with interpreting the law as it stands. It is understood that a Committee is at present engaged in revising the Land Code and I would suggest that representations be made to that Committee or to Government that power should be given to the chargee to incur, if necessary, expenses of the type which we have been considering, namely, insurance of property, repairs to house property and payment of rent and assessment and should be able to recover such outgoings as a charge on the land in addition to the principal sum and interest already secured. So far as the present appeal is concerned the appeal must be dismissed. By consent no order is made as to costs.

*Appeal dismissed.*

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[APPELLATE CIVIL JURISDICTION]

AITKEN, J.

December 17, 1936.

**LETCHUMANAN .....Defendant-Appellant.**

**v.**

**SITHAMBARAM CHETTY.....Plaintiff-Respondent.**

[PERAK MAGISTRATE'S CIVIL APPEAL No. 19 of 1936.]

*The (Perak) Public Servants (Liabilities) Regulation*, 1893—*Fireman in employ of the Federated Malay States Railways on daily wages.*

A fireman, on daily wages, employed by the Federated Malay States Railways does not come within the provisions of the (Perak) Public Servants (Liabilities) Regulation, 1893.

*Cornelius* v. *Wadhawa Singh*, 2 F.M.S.L.R. 203 and *Wadhawa Singh* v. *Ismail Khan*, 2 F.M.S.L.R. 203 followed.

*M. S. Mahendram* for the defendant-appellant.

*B. K. Das* for the plaintiff-respondent.

*Cur. Ad. Vult.*

**AITKEN, J.**—On the 13th of April, 1928, a certain Ramasamy and the appellant executed a joint and several promissory note for $330 in favour of the respondent, the sum of $330 to be paid by twelve monthly instalments of $27.50 each. None of these instalments were paid, and on some date or dates in the month of March, 1929, the respondent obtained judgment against Ramasamy and the appellant for this $330 and costs in the Court of the Magistrate at Taiping. It seems clear, however, that up to date the respondent has not been able to collect any part of that judgment debt from any one.

The respondent is an Indian money lender who is represented in the Federated Malay States by an Attorney. In December, 1935, a change of his Attorneys took place, and the new Attorney seems to have applied himself diligently, and without loss of time, to the difficult business of collecting outstanding judgment debts. Thus we find him, on the 19th of January, 1936, applying to the Court of the Magistrate at Taiping to execute the decree against Ramasamy and the appellant. As that application was made more than one year after the date of the decree, the Court had to issue notices to Ramasamy and the respondent to show cause why the decree should not be executed against them—see section 264 of the Civil Procedure Code (Cap. 7). Apparently Ramasamy could not be found, but service of such notice was effected on the appellant, and on the 30th of April, 1936, he appeared before the learned Magistrate at Taiping to show cause.

In attempting to do so the appellant put forward two pleas—one of fact and one of law. In the first place he alleged that six months after judgment he paid the respondent's then Attorney $150, which was received by the latter in full settlement of the amount due under the decree. In the second place his learned Counsel argued, on his behalf, that in 1928 and 1929 the appellant was, and still is, a public servant within the meaning of the Public Servants (Liabilities) Regulation, 1893 (applied to Perak by Order in Council No. 8 of 1896), and therefore entitled to the protection it affords against an action upon any promissory note. Both these pleas eventually broke down, the first because the learned Magistrate entirely disbelieved the appellant's story about the $150 payment, and the second because the learned Magistrate held that a fireman on the Federated Malay States Railways like the appellant, working for a daily wage, does not come within the scope and meaning of the Regulation I have just quoted. For these reasons he allowed execution to issue against the appellant in respect of the decree of March, 1929, for $330 and costs, and from that decision the appellant has appealed to me.

Mr. Mahendram, for the appellant, only argued one ground of appeal, that is, the contention that the appellant is, and has been at all material times, a public servant within the meaning of that phrase as used in the Public Servants (Liabilities) Regulation 1893. He admitted that the only two reported cases on the point were against him, but urged me to disregard them as being manifestly contrary to the definition of "public servant" contained in section 2 of the Regulation, when read together with section 5 of the same.

For the respondent Mr. Das naturally relied on the two cases in his favour, which were decided so long ago as 1914 and 1916 respectively. He pointed out that they had remained in force for over twenty years, apparently without challenge, and had doubtless been acted upon by the money lending community during that period of time. In the interests of public convenience, and having regard to the protection of private rights, he urged that their authority should remain unshaken.

Now if the question raised in this appeal was '*res integra*' I should have no difficulty in holding that the appellant is a "public servant" within the meaning and scope of the Public Servants (Liabilities) Regulation, 1893, and therefore entitled to the protection it still affords to such persons in regard to actions upon promissory notes executed by them whilst it was still in force. A servant is surely any person employed by another, and subject in his employment to his employer's directions and control; and the Federated Malay States Railways is surely a Government Department. The appellant has admittedly been employed, and continuously employed, by the Federated Malay States Railways from the year 1923 up to today. From 1923 to 1926 he was employed as a cleaner, and from 1926 onwards he has been employed as a fireman. It cannot be doubted that in his employment he has always been subject to the directions and control of those who constitute the directive of the Federated Malay States Railways, and he states that he expects his present employment as a fireman will continue. Given good behaviour on his part, I see no reason whatsoever to doubt that it will continue. True it is that he is paid monthly on the basis of a daily wage, and only for those days on which he actually works; but how can the manner of his remuneration affect his legal status, or lead any one to suppose that he is not "employed" by the

Federated Malay States Railways- If continuity of employment be the true test in cases like this, as Mr. Das suggests that it is, then the appellant's thirteen years of continuous employment surely fulfils that condition. Section 5 of the Public Servants (Liabilities) Regulation, 1893, provides as follows:—

> "For the purposes of this Regulation persons employed in any of the Federal Establishments of the Federated Malay States shall be deemed to be during the period of such employment employed in the service of the Government of the State."

The only difference that I can see between people like the appellant, and other more fortunate "persons employed in any of the Federal Establishments of the Federated Malay States," is that the former are not paid for the days on which they do no work whilst the latter are. But why that difference should be regarded as a good reason for denying to the former the protection admittedly conferred upon the latter by this Regulation of 1893 I am at a loss to understand.

The reports of the two cases decided in 1914 and 1916 respectively, to which I have already made reference, certainly do not help me to understand the *ratio decidendi* on which they are based. In the first of them, *Cornelius* v. *Wadhawa Singh*, 2 F.M.S.L.R. 203 a black-smith in the service of the Federated Malay States Railways was held not to be a public servant within the meaning of the Regulation, no reasons being given for that decision; and in the second of them, *Wadhawa Singh* v. *Ismail Khan*, 2 F.M.S.L.R. 203 a fitter in the service of the Federated Malay States Railways was also held not to be such a servant on the authority of the first of them, and for no other recorded reason. As both the black-smith and the fitter were paid on the basis of a daily wage, it may well be that that fact provided the ground upon which these two cases were decided. If that be so, then I have already made it clear that the fact would not have weighed with me. With the utmost respect for the learned Judges who decided those cases, I cannot help thinking that they were wrongly decided.

But that does not mean that I shall not follow them. It seems to me that I am bound to apply the principle enunciated by Thesiger, L.J. in *Pugh* v. *Golden Valley Railway*, 15 Ch. D. 330, 334 in the following words:—

> "Viewed simply as the decision of a Court of first instance, the authority of this case —*Reg.* v. *Wycombe*, 2 Q.B. 310 notwithstanding the respect due to the Judges who decided it, is not binding upon us; but viewed in its character and practical results, it is one of a class of decisions which acquire a weight and effect beyond that which attaches to the relative position of the Court from which they proceed. It constitutes an authority which, after it has stood for so long a period unchallenged, should not, in the interests of public convenience, and having regard to the protection of private rights, be overruled by this Court except upon very special considerations. For twelve years and upwards that case has continued unshaken by any judicial decision or criticism as an authoritative exposition of the meaning of section 16 of the Railways Clauses Consolidation Act, 1845, in respect of the matter here in dispute."

For twenty years and upwards these two cases of *Cornelius* v. *Wadhawa Singh* (*supra*) and *Wadhawa Singh* v. *Ismail Khan* (*supra*) have been regarded as authoritative decisions on the meaning of the expression "public servant" as used in the Public Servants (Liabilities) Regulation, 1893. Not only have they been so regarded, but also, as Mr. Mahendram admitted, much money has been lent to the humbler employees of the Federated Malay States Railways in the belief that the law was definitely settled by them. That is the main consideration which weighs with me, because it is of such importance that the law should remain settled, so far as possible, and that the private rights which have grown up under its protection should not be lightly disturbed. For these reasons I conceive it to be my duty to follow *Cornelius* v. *Wadhawa Singh* (*supra*) and *Wadhawa Singh* v. *Ismail Khan* (*supra*) though I do not approve of them, and this appeal must therefore be dismissed with costs.

*Appeal dismissed.*

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[APPELLATE CRIMINAL JURISDICTION]
DE BURIATTE, J.
November 28, 1936.

**CHAN TING CHOO.....Appellant**

**v.**

**PUBLIC PROSECUTOR.....Respondent.**

[NEGRI SEMBILAN MAGISTRATE'S CRIMINAL APPEAL No. 15 of 1936.]

*The Opium and Chandu Enactment* (*Cap. 134*), *rule 4* (*iv*) *of the Rules for Registration of Chandu Smokers—Construction of rule 4* (*iv*).

The words "retain possession" in rule 4 (iv) of the Rules for Registration of Chandu Smokers made under the Opium and Chandu Enactment (Cap. 134) have the same meaning as the words "have possession" and mere possession of any other person's registration card, except for the purposes specified in rule 8, is an offence.

*M. Farr* for the appellant.

*C. H. Whitton*, Deputy Public Prosecutor, for the respondent.

*Cur. Ad. Vult.*

**DE BURIATTE, J.**—In this case the accused was charged with being in possession of another person's registration card other than for